**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR**

**THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929**

**RSA.No. 1059 of 2007()**
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**AS.61/2005 of SUB COURT, QUILANDY**
**OS.210/2002 of MUNSIFF COURT, QUILANDY**
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**APPELLANT/APPELLANT/DEFENDANT.**
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**DAMODARAN NAIR P., S/O. KUNHOMA NAIR,**
**POOTHOLI HOUSE, SIVAPURAM AMSOM, KARUMALA DESOM,**
**KOYILANDY TALUK, KOZHIKODE DISTRICT.**

**BY ADV. SRI.R.PARTHASARATHY**

**RESPONDENTS: RESPONDENT/PLAINTIFF.**
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**BABU V.K., S/O. RAGHAVAN,**
**VADAKKE KANDATHIL HOUSE, SIVAPURAM AMSOM,**
**KARUMALA DESOM, KOYILANDY TALUK, KOZHIKODE DIST.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**M.SASIDHARAN NAMBIAR, J.**

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**R.S.A. NO. 1059 OF 2007**

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**Dated this the 6th day of December, 2007**

**J U D G M E N T**

Defendant in O.S No.210/2002 on the file of the Munsiff Court, Koyilandy is the appellant. Plaintiff in the suit is the respondent. Respondent instituted the suit for realisation of Rs.68,250/-, being the amount borrowed with interest. Case of respondent is that brother of appellant Bhaskaran Nair and respondent are close friends and on 5.8.99 Bhaskaran Nair requested respondent to arrange a loan of Rs.50,000/- which he agreed to repay by issuing post dated cheque. Accordingly, on 7.8.99 appellant along with Bhaskaran Nair came to the residence of respondent and borrowed Rs.50,000/-. Appellant issued a post dated cheque for Rs.50,000/- drawn on Thamarassery Branch of State Bank of Travancore dated 26.9.99. Before the due date, appellant approached respondent and requested to postpone presentation of the cheque by two months stating that he is negotiating sale of his property. Ultimately, on 18.1.2000 respondent presented the cheque for encashment. It was dishonoured for insufficient funds. Respondent sent a notice demanding payment which was met with a reply raising false allegations. It was contended that the story of bribery set up in the reply notice is false. Appellant resisted the suit contending that before presentation of the

cheque he filed complaints before the Managing Director of KSRTC , Minister for Transport, Chief Minister as also the Vigilance Department as to the role played by respondent and his associates Raghavan Nair and Bala Marar. It is thereafter the cheque was presented. Appellant contended that his son Sujeesh got selected to the volley ball team of KSRTC temporarily and he was approached by Raghavan Nair and Bala Marar. Respondent stated that selection could be made permanent only if he pays a bribe and reluctantly appellant paid Rs. 1,25,000/- to the respondent and his associates Raghavan Nair and Bala Marar. They had demanded Rs.1,75,000/- . Towards the payment of balance amount, appellant issued the cheque, but it was only for the purpose of employment of his son and not towards repayment of any loan as alleged. It was also contended that subsequently son of appellant got permanent employment and then only he came to know that respondent along with Raghavan Nair and Bala Marar had played a fraud play on him and so he lodged complaint before the Chief Minister, the Transport Minister and the Vigilance Department. It was contended that respondent is not entitled to any amount.

2. Learned Munsiff on the evidence of PWs 1 & 2, Dws 1 & 2, Exts A1 to A6 and B1 to B11 disbelieved the case set up by appellant and accepted the case of respondent and found that Rs.50,000/- was borrowed by appellant from respondent and the dishonoured cheque was issued

towards its repayment as a post dated cheque as canvased by the respondent and was not entrusted as part of the transaction set up by the appellant and granted the decree.

3. Appellant challenged the judgment before Sub court, Koyilandy as A.S. No.61/2005. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

4. Learned counsel appearing for appellant was heard. Argument of the learned counsel is that first appellate court did not properly frame the points for consideration and only considered the correctness of the judgment of the trial court and for that sole reason, the judgment is not sustainable. It was also argued that first appellate court did not independently appreciate the evidence and only considered the correctness of findings of the trial court and the trial court did not appreciate the evidence in the proper perspective and proceeded in a wrong angle and even though in the reply notice it was specifically stated that cheque was issued in the circumstances set up in the written statement and so finding of courts below that there was no proper pleading is not correct. It was argued that along with the plaint respondent produced the reply notice sent by the appellant and as it is produced along with the plaint, it should be treated as part of the pleading and as the facts and circumstances under which the cheque was issued was narrated in the

reply notice, finding of the trial court that there is no pleading is not correct. It was also argued that the trial court appreciated the evidence only on the basis that there was no pleading with regard to the issuance of the cheque when in fact it was pleaded and first appellate court only considered the correctness of the finding of the trial court without independent appreciation of evidence and the fact that dishonoured cheque was presented by respondent after appellant lodged complaint before the Chief Minister, Transport Minister and Vigilance Department was not appreciated and facts establish that appellant did not borrow any amount and in fact respondent received Rs.1,25,000/- and the cheque as bribe and so the decree is not sustainable.

5. On hearing learned counsel, I do not find any substantial question of law involved in the appeal. Under Section 100 of Code of Civil Procedure, it is not for this court to reappreciate the evidence and substitute its finding to the findings of the courts below. Though learned counsel argued that the trial court appreciated the evidence from a wrong angle and first appellate court did not independently appreciate the evidence, on going through the judgments, I cannot agree with the said submission. The trial court and first appellate court appreciated the evidence with regard to the transaction. When appellant set up a case that dishonoured cheque was not issued under the circumstances pleaded in the plaint, but as part of the transaction where under bribe wad demanded

and paid, respondent contended that the cheque was issued towards repayment of the loan amount borrowed by the appellant and that too at the time of borrowal as a post dated cheque. Both the courts accepted the evidence on the side of the respondent and did not believe the evidence set up by the appellant. It cannot be said that the view taken by the courts below on appreciation of evidence is either a perverse view or a view which is not possible to be taken on appreciation of evidence. Though learned counsel argued that Ext.B11 audio cassette and Ext.B11(a) its transcript would prove the correctness of the case of the appellant, courts below rightly appreciated the value of Ext.B11 and B11(a) in the light of the Apex court decision in R.M.Malkani v. State of Maharashtra [AIR 1973 SC 157]. It was brought out in evidence that though a complaint was lodged alleging bribe, on investigation the case was referred and set up to defence the case based on the cheque and appellant did not pursue the matter further. It was also admitted that appellant did not take steps to get back Rs.1,25,000/- allegedly paid on bribe.

In the nature of facts and circumstances and evidence of the case, no substantial question of law is involved. Appeal is dismissed in limine.

**M.SASIDHARAN NAMBIAR, JUDGE**

vps